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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,739	02/03/2004	Weiling Peng	129843.1016 (H.007C1)	1004

60148 7590 03/18/2008

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EXAMINER

THOMPSON, CAMIE S

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/18/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/770,739	<b>Applicant(s)</b> PENG ET AL.	
	<b>Examiner</b> Camie S. Thompson	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on RCe filed 10/26/07.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 8, 10-17 and 22-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20, 21, 27 and 28 is/are allowed.
- 6) ☒ Claim(s) 1-3, 8, 10-17, 22-26, 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/26/07;12/3/07;12/10/07</u>                                 | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 26, 2007 has been entered.
2. Applicant's amendment and accompanying remarks filed October 26, 2007 are acknowledged.
3. Examiner acknowledges amended claims 1, 17, 20, 22-23, 25 and 29.
4. Examiner acknowledges cancelled claims 18-19.
5. Examiner regrets the indication of allowable subject matter in the previous office action for previously presented (now cancelled) claim 19.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 8, 10-17, 22-26 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Guyette, U.S. Patent Number 5,425,986.

Guyette discloses a high-pressure laminate structure that can be suitable for flooring (see column 1, lines 44-62). The Guyette reference discloses a laminate structure comprising a fiber cement board as a core layer or substrate (11) having a top and bottom surface and at least one resin impregnated sheet (30) on at least one side of the substrate (see Figure 1). Additionally, the reference discloses an adhesive (20), which can be an isocyanate/urethane, epoxy or polyvinyl acetate that is between the substrate and the at least one resin impregnated sheet (see Figure 2 and column 6, lines 15-35). It is also disclosed in column 6 that there are two layers (20,21) that comprise isocyanate/urethane, epoxy or polyvinyl acetate, which are present between the substrate and the at least one resin impregnated sheet. Column 4, lines 49-68 of the reference disclose that the resin used to impregnate the sheets include melamine-formaldehyde resin and phenol-formaldehyde resin as per the instant claims. Also, Figure 1 of the reference discloses that a resin-impregnated paper (30 and 31) can be laminated to both sides of the substrate. Additionally in Figure 1, another resin impregnated (41) sheet can be laminated onto another resin-impregnated sheet (30) as per instant claim 12. The elongation, modulus of elasticity and glass transition temperature are physical properties of the epoxy films. The Guyette reference discloses in column 6 that the epoxy is well known in the art and are commercially available. Applicant admits in paragraphs 0015-0016 that the polymeric film that is used as the elastomer can be a thermosetting polymer such as epoxy.

8. Claims 20-21 and 27-28 are allowed. The prior art does not provide for the recited building material, further including the elastomeric film having a thickness of about 5 mil or less and has an elongation between 20% and 1200%, wherein the modulus of elasticity at 100%

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elongation of between about 10 and 10,000 psi, and wherein the elastomer has a glass transition temperature between about -90 and 50 °C. Additionally, the prior art does not provide for the recited building material, further including at least one adhesive layer between the cementitious substrate and at least one resin impregnated paper.

### ***Response to Arguments***

9. Applicant's arguments filed October 26, 2007 have been fully considered but they are not persuasive. Examiner regrets the indication of allowable subject matter in the previous office action for previously presented (now cancelled) claim 19. Applicant argues that Guyette does not teach or suggest a stress-relieving polymeric film between a cementitious substrate and at least one resin impregnated paper and an adhesive disposed on at least one surface of the polymeric film. Guyette discloses adhesives (20,21) in column 6 between the substrate and the at least one resin impregnated sheet. Applicant recites that the polymeric film can be a polyvinyl film. Guyette discloses that the adhesives can be polyvinyl acetate. The stress-relieving elastomer and adhesive are present in structure in the reference as required by the present claims. Applicant argues that elongation and modulus of elasticity are not taught or suggested by Guyette. Instant claims 1 and 2 do not provide any distinguishing properties of the elastomer. The elongation and modulus of elasticity recited by the present claims are extremely broad and would be encompassed by the generic polyvinyl acetate. The rejection is maintained.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Camie S. Thompson whose telephone number is (571) 272-1530. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 pm. If

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attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached at (571) 272-1478. The fax phone number for the Group is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Terrel Morris/  
Terrel Morris  
Supervisory Patent Examiner  
Group Art Unit 1794